

JULIE A. BLAIR
Attorney at Law
California State Bar No. 190802
964 Fifth Ave., Ste. 214
San Diego, California 92101
Telephone: (619) 544-1419 Fax (619) 544-1429

Attorney for Mr. Arellano-Rojas

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

(HON. WILLIAM Q. HAYES)

I.

STATEMENT OF FACTS

The following statement of facts is based, in part, on materials received from the government. Mr. Arellano-Rojas does not accept this statement of facts as his own, and reserves the right to take a contrary position at motions hearing and trial. The facts alleged in these motions are subject to amplification and/or modification at the time these motions are heard.

On March 15, 2008, Mr. Arellano-Rojas was arrested in Heber, California by Imperial County Sheriffs Department and booked into the Imperial County Jail. While in custody an Immigration Enforcement Agent placed an Immigration detainer on him pending his release from jail. On March 19, 2008, Mr. Arellano-Rojas was referred to the custody of ICE in Imperial, California.

1 Records checks were conducted. Mr. Arellano-Rojas was charged with being a Deported Alien
2 Found in the United States.

3 On April 16, 2008, an indictment was filed charging Mr. Arellano-Rojas with Deported Alien
4 Found in the United States in violation of Title 8 U.S.C s. 1326.

5
6 **II.**

7 **MOTION TO COMPEL FURTHER DISCOVERY**

8 As of the date of this filing, the government has provided defense counsel with some
9 discovery in this case. Mr. Arellano-Rojas moves for the production of discovery pursuant to
10 Fed.R.Crim.P. 12(b)(4) and 16. This request is not limited to those items that the prosecutor knows
11 of, but rather includes all discovery listed below that is in the custody, control, care, or knowledge
12 of any investigative or other governmental agencies closely connected to the prosecution. See Kyle
13 v. Whitley, 514 U.S. 419, 437 (1995); United States v. Bryan, 868 F.2d 1032 (9th Cir. 1989).

14 (1) Mr. Arellano-Rojas' Statements. The Government must disclose to the defendant all
15 copies of any written or recorded statements made by the defendant; the substance of any statements
16 made by the defendant which the Government intends to offer in evidence at trial; any response by
17 the defendant to interrogation; the substance of any oral statements which the Government intends
18 to introduce at trial and any written summaries of the defendant's oral statements contained in the
19 handwritten notes of the Government agent; any response to any Miranda warnings which may have
20 been given to the defendant; as well as any other statements by the defendant. Fed. R. Crim. P.
21 16(a)(1)(A). The Advisory Committee Notes and the 1991 amendments to Rule 16 make clear that
22 the Government must reveal all the defendant's statements, whether oral or written, regardless of
23 whether the government intends to make any use of those statements.

24 (2) Arrest Reports, Notes and Dispatch Tapes. The defendant also specifically requests the
25 Government to turn over all arrest reports, notes, dispatch or any other tapes, and TECS records that
26 relate to the circumstances surrounding his arrest or any questioning. This request includes, but is
27 not limited to, any rough notes, records, reports, transcripts or other documents in which statements
28 of the defendant or any other discoverable material is contained. Such material is discoverable

1 under Fed. R. Crim. P. 16(a)(1)(A) and Brady v. Maryland, 373 U.S. 83 (1963). The Government
2 must produce arrest reports, investigator's notes, memos from arresting officers, dispatch tapes,
3 sworn statements, and prosecution reports pertaining to the defendant. See Fed. R. Crim. P.
4 16(a)(1)(B) and (C), Fed. R. Crim. P. 26.2 and 12(I).

5 (3) Brady Material. The defendant requests all documents, statements, agents' reports, and
6 tangible evidence favorable to the defendant on the issue of guilt and/or which affects the credibility
7 of the Government's case. Under Brady, impeachment as well as exculpatory evidence falls within
8 the definition of evidence favorable to the accused. United States v. Bagley, 473 U.S. 667 (1985);
9 United States v. Agurs, 427 U.S. 97 (1976).

10 (4) Any Information That May Result in a Lower Sentence Under The Guidelines. The
11 Government must produce this information under Brady v. Maryland, 373 U.S. 83 (1963). This
12 request includes any cooperation or attempted cooperation by the defendant as well as any
13 information that could affect any base offense level or specific offense characteristic under Chapter
14 Two of the Guidelines. The defendant also requests any information relevant to a Chapter Three
15 adjustment, a determination of the defendant's criminal history, and information relevant to any
16 other application of the Guidelines.

17 (5) The Defendant's Prior Record. The defendant requests disclosure of his prior record.
18 Fed. R. Crim. P. 16(a)(1)(B).

19 (6) Defendant's "A" File The defendant requests his Immigration and Naturalization service
20 "A" file, number A041834898;

21 (8) Any Proposed 404(b) Evidence. The government must produce evidence of prior similar
22 acts under Fed. R. Crim. P. 16(a)(1)(C) and Fed. R. Evid. 404(b) and 609. In addition, under Rule
23 404(b), "upon request of the accused, the prosecution . . . shall provide reasonable notice in advance
24 of trial . . . of the general nature . . ." of any evidence the government proposes to introduce under
25 Fed. R. Evid. 404(B) at trial. The defendant requests that such notice be given three (3) weeks
26 before trial in order to give the defense time to adequately investigate and prepare for trial.

27 (9) Evidence Seized. The defendant requests production of evidence seized as a result of
28 any search, either warrantless or with a warrant. Fed. R. Crim. P. 16(a)(1)(C).

1 (10) Request for Preservation of Evidence. The defendant specifically requests the
2 preservation of all dispatch tapes or any other physical evidence that may be destroyed, lost, or
3 otherwise put out of the possession, custody, or care of the Government and which relate to the
4 arrest or the events leading to the arrest in this case.

5 (11) Tangible Objects. The defendant requests the opportunity to inspect and copy as well
6 as test, if necessary, all other documents and tangible objects, including photographs, books, papers,
7 documents, fingerprint analyses, vehicles, or copies of portions thereof, which are material to the
8 defense or intended for use in the Government's case-in-chief or were obtained from or belong to
9 the defendant. Fed. R. Crim. P. 16(a)(2)©).

10 (12) Evidence of Bias or Motive to Lie. The defendant requests any evidence that any
11 prospective Government witness is biased or prejudiced against the defendant, or has a motive to
12 falsify or distort his or her testimony.

13 (13) Impeachment Evidence. The defendant requests any evidence that any prospective
14 Government witness has engaged in any criminal act whether or not resulting in a conviction and
15 whether any witness has made a statement favorable to the defendant. See Fed R. Evid. 608, 609
16 and 613; Brady v. Maryland, supra.

17 (14) Evidence of Criminal Investigation of Any Government Witness. The defendant
18 requests any evidence that any prospective witness is under investigation by federal, state or local
19 authorities for any criminal conduct.

20 (15) Evidence Affecting Perception, Recollection, Ability to Communicate, or Truth Telling.
21 The defense requests any evidence, including any medical or psychiatric report or evaluation, that
22 tends to show that any prospective witness' ability to perceive, remember, communicate, or tell the
23 truth is impaired, and any evidence that a witness has ever used narcotics or other controlled
24 substance, or has ever been an alcoholic.

25 (16) Witness Addresses. The defendant requests the name and last known address of each
26 prospective Government witness. The defendant also requests the name and last known address of
27 every witness to the crime or crimes charged (or any of the overt acts committed in furtherance
28 thereof) who will not be called as a Government witness.

1 (17) Name of Witnesses Favorable to the Defendant. The defendant requests the name of
2 any witness who made an arguably favorable statement concerning the defendant or who could not
3 identify his or who was unsure of his identity, or participation in the crime charged.

4 (18) Statements Relevant to the Defense. The defendant requests disclosure of any statement
5 relevant to any possible defense or contention that he might assert.

6 (19) Jencks Act Material. The defendant requests production in advance of trial of all
7 material, including dispatch tapes, which the government must produce pursuant to the Jencks Act,
8 18 U.S.C. § 3500. Advance production will avoid the possibility of delay at the request of defendant
9 to investigate the Jencks material. A verbal acknowledgment that “rough” notes constitute an
10 accurate account of the witness’ interview is sufficient for the report or notes to qualify as a
11 statement under § 3500(e)(1). Campbell v. United States, 373 U.S. 487, 490-92 (1963). In United
12 States v. Boshell, 952 F.2d 1101 (9th Cir. 1991) the Ninth Circuit held that when an agent goes over
13 interview notes with the subject of the interview the notes are then subject to the Jencks Act.

14 (20) Giglio Information. Pursuant to Giglio v. United States, 405 U.S. 150 (1972), the
15 defendant requests all statements and/or promises, express or implied, made to any Government
16 witnesses, in exchange for their testimony in this case, and all other information which could
17 arguably be used for the impeachment of any Government witnesses.

18 (21) Agreements Between the Government and Witnesses. The defendant requests discovery
19 regarding any express or implicit promise, understanding, offer of immunity, of past, present, or
20 future compensation, or any other kind of agreement or understanding, including any implicit
21 understanding relating to criminal or civil income tax, forfeiture or fine liability, between any
22 prospective Government witness and the Government (federal, state and/or local). This request also
23 includes any discussion with a potential witness about or advice concerning any contemplated
24 prosecution, or any possible plea bargain, even if no bargain was made, or the advice not followed.

25 (23) Informants and Cooperating Witnesses. The defendant requests disclosure of the names
26 and addresses of all informants or cooperating witnesses used or to be used in this case, and in
27 particular, disclosure of any informant who was a percipient witness in this case or otherwise
28 participated in the crime charged against Mr. Arellano-Rojas. The Government must disclose the

1 informant's identity and location, as well as disclose the existence of any other percipient witness
2 unknown or unknowable to the defense. Roviaro v. United States, 353 U.S. 52, 61-62 (1957). The
3 Government must disclose any information derived from informants which exculpates or tends to
4 exculpate the defendant.

5 (24) Bias by Informants or Cooperating Witnesses. The defendant requests disclosure of any
6 information indicating bias on the part of any informant or cooperating witness. Giglio v. United
7 States, 405 U.S. 150 (1972). Such information would include what, if any, inducements, favors,
8 payments or threats were made to the witness to secure cooperation with the authorities.

9 (25) Personnel Records of Government Officers Involved in the Arrest. Defendant requests
10 all citizen complaints and other related internal affairs documents involving any of the immigration
11 officers or other law enforcement officers who were involved in the investigation, arrest and
12 interrogation of him, pursuant to Pitchess v. Superior Court, 11 Cal.3d 531, 539 (1974). Because
13 of the sensitive nature of these documents defense counsel will be unable to procure them from any
14 other source.

15 (26) Government Examination of Law Enforcement Personnel Files. Mr. Arellano-Rojas
16 requests that the Government examine the personnel files and any other files within its custody, care
17 or control, or which could be obtained by the government, for all testifying witnesses, including
18 testifying officers. Mr. Arellano-Rojas requests that these files be reviewed by the Government
19 attorney for evidence of perjurious conduct or other like dishonesty, or any other material relevant
20 to impeachment, or any information that is exculpatory, pursuant to its duty under United States v.
21 Henthorn, 931 F.2d 29 (9th Cir. 1991). The obligation to examine files arises by virtue of the
22 defense making a demand for their review: the Ninth Circuit in Henthorn remanded for in camera
23 review of the agents' files because the government failed to examine the files of agents who testified
24 at trial. This Court should therefore order the Government to review all such files for all testifying
25 witnesses and turn over any material relevant to impeachment or that is exculpatory to Mr. Arellano-
26 Rojas prior to trial. Mr. Arellano-Rojas specifically requests that the prosecutor, not the law
enforcement officers, review the files in this case. The duty to review the files, under Henthorn,

1 should be the prosecutor's. Only the prosecutor has the legal knowledge and ethical obligations to
2 fully comply with this request.

3 (27) Expert Summaries. Defendant requests written summaries of all expert testimony that
4 the government intends to present under Federal Rules of Evidence 702, 703 or 705 during its case
5 in chief, written summaries of the bases for each expert's opinion, and written summaries of the
6 experts' qualifications. Fed. R. Crim. P. 16(a)(1)(E). This request includes, but is not limited to,
7 fingerprint expert testimony.

8 (28) Residual Request. Mr. Arellano-Rojas intends by this discovery motion to invoke his
9 rights to discovery to the fullest extent possible under the Federal Rules of Criminal Procedure and
10 the Constitution and laws of the United States. This request specifically includes all subsections of
11 Rule 16. Mr. Arellano-Rojas requests that the Government provide him and his attorney with the
12 above requested material sufficiently in advance of trial to avoid unnecessary delay prior to cross-
13 examination.

III.

MR. ARELLANO-ROJAS REQUESTS LEAVE TO FILE FURTHER MOTIONS

Mr. Arellano-Rojas has received some discovery from the Government. As this discovery is reviewed and further discovery is provided, the defense will find it necessary to file further motions. Mr. Arellano-Rojas hereby requests leave to do so.

IV.

CONCLUSION

For the reasons stated above, Mr. Arellano-Rojas respectfully requests that this Court grant
the foregoing motions.

Respectfully submitted,

26 | Dated: May 7, 2008

S/Julie A. Blair
JULIE A. BLAIR
Attorney for Mr. Arellano-Rojas